IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 4103 of 2007(L)

PETITIONER:

M/S.KAILEYBURIA TEA ESTATE LTD.,
ELAPPARA, IDUKKI DISTRICT.
REPRESENTED BY ITS MARKETING EXECUTIVE,
MR.G.K.NAIR.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS:

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1. THE ASSISTANT PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB-REGIONAL OFFICE, CHALAKUZHY BUILDING, CMS COLLEGE ROAD, KOTTAYAM -686 001.

2. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, 7TH FLOOR, 60, SKYLARK BUILDING, NEHRU PLACE, NEW DELHI-110 019.

BY S.C. ADV.SRI.JOY THATTIL ITTOOP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C) No. 4103 Of 2007

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Dated this the 14th day of February, 2007.

J U D G M E N T

Heard learned counsel for the petitioner and standing counsel for the E.P.F.organisation.

2. The petitioner, a plantation owner faces order for damages and also for interest. In so far as the order for damages is concerned, petitioner has filed Ext.P10 appeal before the competent authority. In the case of order for interest, there is no appeal.

3. The principal ground on which Ext.P10 appeal stands is that petitioner was not heard before the impugned orders for damages and interest was issued by the competent statutory authority. A perusal of those orders would indicate that the petitioner was served with show-cause notice, however that no cause was

shown within the time fixed. Learned counsel for the petitioner urges that they had sent a letter to the competent authority seeking an adjournment of the hearing, but that was not acted upon.

4. The petitioner appears to have a case that there was a period of lock-out, during which time, no wages were paid and therefore, there could not be deduction from the wages and accordingly, contributions were not collected and paid into the fund in time. Hence damage may not be levied.

5. On the facts and circumstances of the case, request of the petitioner to be heard by the competent authority making the assessment of damages is to be considered. It is directed that if the petitioner deposits the entire interest accrued under the impugned orders under protest and 30% of the damages levied within a period of one week, Exts.P8 and P9 orders will stand setaside . Ext.P10 will then stand struck off from the files of the statutory appellate authority. If the petitioner makes the

payment as aforesaid, it shall also appear before the 1st respondent on 20th March 2007 and the said authority will fix a date for hearing the petitioner and decide the matter accordingly. Petitioner shall ensure that all materials in support of its case shall be placed before the 1st respondent without delay and necessary opportunity advanced, shall be availed.

It is also directed that if any consequent proceedings has followed Exts.P8 and P9, the same shall stand recalled for a period of one month and would then be subject to what is stated above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

sj